

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSEPH AND MARK MCCORMICK,

Plaintiffs,

v.

Case No. 12-C-763

INDEPENDENCE LIFE AND
ANNUITY COMPANY,

Defendant.

DECISION AND ORDER

Plaintiffs have filed a motion for reconsideration of this Court's decision granting the Defendant's motion to dismiss. (ECF No. 42.) I conclude that the motion should be denied.

Much of the dispute pertains to an apparent discrepancy between the applicable insurance policy and the prospectus. In deciding in favor of the Defendant, I noted in a footnote that the prospectus appeared to support the Plaintiffs' reading of the policy but that: (1) they had not argued the prospectus was part of the policy; and (2) the prospectus did not, in fact, appear to be part of the policy. (ECF No. 42 at n.2.) Nothing in the present filings changes my view of matters. Upon re-examination of the briefs, it is clear that Plaintiffs did not make such an argument the first time around. They instead argued that the prospectus was consistent with the policy and noted that it had been referenced in the application, which *is* part of the policy. (ECF No. 36 at 11.) That is not an argument that the prospectus itself is part of the policy.

Even if the issue were not waived, however, the policy language does not specifically

incorporate the prospectus. As the original dismissal order notes, the “entire contract” was made up of the policy with the “attached application and papers,” which did not include a prospectus. (ECF No. 37-1 at 4.) This is not a mere technicality. As explained at greater length in the dismissal order, in my view the Plaintiffs’ reading of the policy language would not make sense in the greater context of the policy, and so the Defendant’s reading is far preferable and is supported by the actual policy language cited. For these reasons, the motion for reconsideration is **DENIED**.

SO ORDERED this 14th day of August, 2014.

/s William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court